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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,451	09/21/2001	Steven M. Berman	RSW920010141US1	5778

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EXAMINER

ELMORE, REBA I

ART UNIT	PAPER NUMBER
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2187

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/960,451	<b>Applicant(s)</b> BERMAN ET AL.	
	<b>Examiner</b> Reba I. Elmore	<b>Art Unit</b> 2187	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

1. Claims 1-75 are presented for examination.

### *Specification*

2. The disclosure is objected to because of the following informalities:
3. The 'CROSS REFERENCE TO RELATED APPLICATIONS' section must be updated to show either the PTO application number or patent number, whichever is appropriate.

Appropriate correction is required.

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Double Patenting*

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-75 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of copending Application No. 09/960448. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

**present invention – claim 1**

A method in a data processing system for minimizing inconsistency between a set of data sources, the method comprising:

sending a first signal indicating that new content is present for the set of data sources;

transmitting the new content to the set of data sources,

wherein the new content is unavailable for distribution by the set of data sources until a second signal is received by the set of data sources; and

sending the second signal to the set of data sources if an acknowledgment is received from all of the set of data sources.

**09/960488 (claims 1 and 5)**

A method in a data processing system for managing data in a network data processing system, the method comprising:

receiving a packet containing data associated with content *as the received packet is an indication or first signal of content being present*

distributing the content in response to a request for the content

wherein an indicator is located in the packet (content) is used for determining whether the content is enabled for content distribution *teaches the content is not available for distribution with the second signal being equivalent to the indicator within the data packet as the indication specifically indication whether or not the content or data packet is enabled for distribution*

*is equivalent to sending the content when the indicator within the packet signals enablement of content distribution.*

The conflicting claims are not identical, however, they are not patentably distinct from the claims of the present invention. The present invention is directed toward 'a set of data sources' as opposed to 'a data processing system' or 'a network data processing system', however, the data processing system and/or the network data processing system includes multiple data sources within the individual systems as well as within connective nodes as further described in the specification of application 09/960488. It would have been obvious to one of ordinary skill in the art at the time the invention was made for the systems to transfer or distribute content to multiple data sources because these systems are comprised of multiple data sources and the type of content described in the application disclosure includes types of content published and available for mass distribution (e.g., see paragraph 0007 of 09/960488). The preamble of claim 1 states the data processing system is for minimizing inconsistency between a set of data sources, however, nothing in the body of claims 1-75 is directed toward accomplishing this use and therefor has not been specifically addressed in the double patenting rejection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. This analysis has been detailed for claim 1 of the present application, however, the double patenting rejection is applied to all the claims, 1-75.

### ***35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. Claims 1-75 are rejected under 35 U.S.C. 102(e) as being anticipated by Uchida.
9. Uchida teaches the invention (claims 1, 11, 16, 20-21, 24, 25, 26, 27, 30-31, 40, 45, 49-50, 53, 63, 68 and 72-73) as claimed including a system and method in a data processing system for minimizing inconsistency between a set of data sources, the method comprising:
  - a bus system as part of the user apparatus (e.g., see paragraphs 0042-0043);
  - a communication unit connected to the bus system as the means to communicated with Internet services and providers (e.g., see paragraphs 0042-0043);
  - a memory connected to the bus system, wherein the memory includes a set of instructions as part of the user apparatus (e.g., see paragraphs 0042-0043);
  - a processing unit connected to the bus system as part of the user apparatus (e.g., see paragraphs 0042-0043);
  - sending a first signal indicating the new content is present for the set of data sources as the content distributor notifying the user terminal of receipt of content (e.g., see paragraph 0073);
  - transmitting the new content to the set of data sources, wherein the new content is unavailable for distribution by the set of data sources until a second signal is received by the set of data sources as not transmitting the new content until the conditions of the content distribution agreement have been met (e.g., see paragraph 0074); and,
  - sending the second signal to the set of data sources if an acknowledgment is received from all of the set of data sources as the inputting of the fingerprint data as well as the conditions of the desired uses of the data content (e.g., see paragraphs 0073-0077).

As to claims 2, 31, and 54, Uchida teaches sending the second signal to each of the data sources returning the acknowledgment after a period of time has passed without all of the data sources returning the acknowledgment as normal operation of a web based node as not all connected nodes will be involved in a given transaction (e.g., see paragraphs 0005-0013).

As to claims 3, 32 and 55, Uchida teaches removing a node from the set of nodes if the node fails to return the acknowledgment within the period of time as requiring a user response prior to the distribution of content even when the distribution has been arranged for periodic distribution (e.g., see paragraphs 0018-0022).

As to claims 4, 12, 23, 29, 33, 41, 52, 56, 64 and 75, Uchida teaches the first signal is a pull notification indicating that the new content will be pulled by the set of nodes as retrieving content from network servers in the system (e.g., see paragraph 0025).

As to claims 5, 13, 22, 28, 34, 42, 51, 57, 65 and 74, Uchida teaches the second signal is a push notification indicating the new content will be transmitted to the set of nodes as accumulation and reproducing the content from the content distribution means (e.g., see paragraph 0025).

As to claims 6, 15, 35, 44, 58 and 67, Uchida teaches the new content is an update to existing content located at the set of nodes as the content can be newspapers or magazines which are periodically updated (e.g., see paragraph 0009).

As to claims 7, 14, 17, 19, 36, 43, 46, 48, 59, 66, 69 and 71, Uchida teaches the set of nodes includes at least one of a Web server and a data cache as inherent to these systems as Web servers and data caches are common elements.

As to claims 8, 18, 37, 47, 60 and 70, Uchida teaches billing a set of clients for maintaining content at the set of data sources (e.g., see paragraphs 0005-0006).

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As to claims 9, 38 and 61, Uchida teaches receiving the new content from a client based on a contract with the client to maintain content at the set of data sources (e.g., see paragraphs 0005-0006).

As to claims 10, 39 and 62, Uchida teaches the first signal includes the content (e.g., see paragraphs 0014-0032).

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reba I. Elmore, whose telephone number is (703) 305-9706. The examiner can normally be reached on M-TH from 7:30am to 6:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the art unit supervisor for AU 2187, Donald Sparks, can be reached for general questions concerning this application at (703) 308-1756. Additionally, the official fax phone number for the art unit is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center receptionist whose telephone number is (703) 305-3800/4700.



Reba I. Elmore  
Primary Patent Examiner  
Art Unit 2187